

1970, and (ii) if applicable, the following disclosure:

“REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to re-segregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.”.

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a financial institution that is subject to §403.5(d) shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in §403.5(d) concerning the inapplicability of deposit insurance, and (ii) if applicable, the following disclosure:

“REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to re-segregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.”.

(3) In the case of hold-in-custody repurchase transactions initiated before August 31, 1987 and terminating on or after August 31, 1987, the disclosure document described in this paragraph (d) must be mailed to the counterparties involved on or before August 31, 1987. In the case of a hold-in-custody repurchase transaction initiated on or after August 31, the disclosure document described in this paragraph (d)

must be provided to the counterparty involved no later than the day on which the first hold-in-custody repurchase transaction is initiated on or after August 31, 1987, unless the disclosure has already been provided to the counterparty in accordance with the preceding sentence.

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction, initiated on or before August 31, 1987, that, by its terms, matures on a specific date after August 31, 1987.

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988]

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

- 404.1 Application of part to registered brokers and dealers.
- 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.
- 404.3 Records to be preserved by registered government securities brokers and dealers.
- 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.
- 404.5 Securities counts by registered government securities brokers and dealers.

AUTHORITY: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27952, July 24, 1987, unless otherwise noted.

§404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with §240.17a-3 of this title (pertaining to records to be made), §240.17a-4 of this title (pertaining to preservation of records), §240.17a-13 of this title (pertaining to quarterly securities counts) and §240.17a-7 of this title (pertaining to records of non-resident brokers or dealers), including provisions in those rules relating to OTC

derivatives dealers, constitutes compliance with this part.

[71 FR 54411, Sept. 15, 2006]

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a-3 of this title (SEC Rule 17a-3), with the following modifications:

(1) References to “broker or dealer” and “broker or dealer registered pursuant to Section 15 of the Act” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, 240.17a-5, and 240.17a-13 mean such sections as modified by this part and part 405 of this chapter.

(3) (i) Except in the case of a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, paragraph 240.17a-3(a)(11) is modified to read as follows:

“(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *provided however*, that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from part 402 of this title. Such trial balances and computations shall be prepared currently at least once a month.”.

(ii) For a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3-1 include modifications contained in § 402.1(e) of this chapter.

(4) Paragraph 240.17a-3(b)(1) is modified to read as follows:

“(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to

section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a-3 and 240.17a-4: *Provided*, that the clearing broker or dealer has and maintains net capital of not less than \$250,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than \$250,000) and is otherwise in compliance with § 240.15c3-1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3-1 by paragraph (b)(2) thereof.”

(5) The undertaking in § 240.17a-3(b)(2) is modified to read as follows:

“The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR 404.2 and 404.3 and Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.”.

(6) Section 240.17a-3(c) is modified to read as follows:

“(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as are required by paragraph (a) reflecting the sale and redemption

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of United States Savings Bonds, United States Savings Notes and United States Savings Stamps.”.

(b) Every registered government securities broker or dealer shall comply with the requirements of §240.17h-1T of this title (SEC Rule 17h-1T), with the following modifications:

(1) For the purposes of this section, references to “broker or dealer” and “broker or dealer registered with the Commission pursuant to Section 15 of the Act” mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§240.17h-1T and 240.17h-2T of this title mean those sections as modified by §§404.2(b) and 405.5, respectively.

(3) For the purposes of this section, “associated person” has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraphs 240.17h-1T(a)(1)(iii) through (vi) of this title are modified to read as follows:

“(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the registered government securities broker or dealer that are required to be disclosed, under generally accepted accounting principles on a consolidated basis, by the highest level holding company that is a Material Associated Person.

“(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter-end for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

“(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

“(vi) The amount as of quarter-end, and at month-end if greater than quarter-end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. Treasury securities, that exceeds the Materiality Threshold at any month-end;”

(5) Paragraphs 240.17h-1T(a)(3) and (a)(4) of this title are modified to read as follows:

“(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of §404.3 of this title and shall be kept for a period of not less than three years in an easily accessible place.

“(4) For the purposes of this section and §405.5 of this title, the term “Materiality Threshold” shall mean the greater of:

“(i) \$100 million; or

“(ii) 10 percent of the registered government securities broker’s or dealer’s liquid capital based on the most recently filed Form G-405 (or, in the case of futures commission merchants and interdealer brokers subject to the capital rules in §§402.1(d) and 402.1(e), respectively, tentative net capital based on the most recently filed Form X-17A-5) or 10 percent of the Material Associated Person’s tangible net worth, whichever is greater.”

(6) Paragraph 240.17h-1T(b) of this title is modified to read as follows:

“(b) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if: * * *

(7) Paragraph 240.17h-1T(c) of this title is modified to read as follows:

“(c) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the

recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if such registered government securities broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act.”

(8) Paragraph 240.17h-1T(d) of this title is modified to read as follows:

“(d) *Exemptions.* (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

“(i) Which is exempt from the provisions of §240.15c3-3 of this title, as made applicable by §403.4, pursuant to paragraph (k)(2) of §240.15c3-3 of this title; or

“(ii) If the registered government securities broker or dealer does not qualify for an exemption from the provisions of §240.15c3-3 of this title, as made applicable by §403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

“(iii) In the case of paragraphs (d)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least \$20,000,000, including debt subordinated in accordance with Appendix D of §240.15c3-1 of this title, as modified by Appendix D of §402.2.

“(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than \$250,000, including debt subordinated in accordance with Appendix D of §240.15c3-1 of this title, as modified by Appendix D of §402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, cus-

tomers or carries the accounts of, or for, customers.

“(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

“(i) The registered broker or dealer is subject to, and in compliance with, the provisions of §240.17h-1T and §240.17h-2T of this title, and

“(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to §240.17h-1T and §240.17h-2T of this title.

“(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of §240.15c3-3 of this title, pursuant to paragraph (k)(1) of §240.15c3-3, shall not be included in the capital computation.

“(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term “Reporting Registered Government Securities Broker or Dealer” shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers.”

(9) Paragraph 240.17h-1T(g) of this title is modified to read as follows:

“(g) *Implementation schedule.* Every registered government securities

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broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing June 30, 1995. Commencing September 30, 1995, the provisions of this section shall apply in their entirety.”

(c)(1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to Section 15C of the Act shall comply with § 240.17a-7 of this title, provided that:

(i) For the purposes of this section, references to “broker or dealer” and “broker or dealer registered or applying for registration pursuant to Section 15 of the Act” mean registered government securities brokers or dealers; and

(ii) For the purposes of this section, references to “any rule or regulation of the Commission” and “any rule or regulation of the Securities and Exchange Commission” mean any rule or regulation of the Secretary.

(2) For the purposes of this section, the term “non-resident government securities broker or dealer” means:

(i) In the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(d) *Effective date.* Paragraph (a) of this section shall be effective on October 31, 1987, *except that* registered government securities brokers and dealers are required to maintain the records specified in § 240.17a-3(a) (12), (13), (14) and (15) beginning July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995; 60 FR 20399, Apr. 26, 1995]

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§ 404.3 Records to be preserved by registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to “broker or dealer” and “broker and dealer registered pursuant to Section 15 of the Act” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, .17a-4, and .17a-5 mean such sections as modified by this part and part 405 of this chapter.

(3) References to § 240.15c3-1, relating to net capital, and “Computation for Net Capital” thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(5) References to Form X-17A-5 mean Form G-405 (§ 449.5 of this chapter).

(6) The computation described in § 240.17a-4(b)(8)(x) is not required.

(b) A government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to “broker or dealer” and “broker and dealer” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, and 240.17a-5 mean such sections as modified by this part and part 405 of this chapter.

(3) With respect to a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) of this chapter, references to

§ 240.15c3-1, relating to net capital, and “Computation for Net Capital” thereunder include the modifications contained in § 402.1(e) of this chapter.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(c) This section shall be effective on July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) *Records to be made and kept.* Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to part 401 of this chapter shall comply with the requirements of §§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR part 12 (relating to national banks), 12 CFR part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or agency of a foreign bank and complies with 12 CFR part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR part 344 (for insured state licensed branches and agencies of foreign banks);

(2) Complies with the recordkeeping requirements of § 450.4(c), (d) and (f) of this chapter; and

(3) Makes and keeps current:

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all “long” or “short” positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) and showing the location of all government securities

long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(B) A complete and current Form G-FIN-4 (§ 449.3 of this chapter) or Form U-4 (promulgated by a self-regulatory organization) or Form MSD-4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.3 of this chapter;

(C) A Form G-FIN-5 (§ 449.4 of this chapter) or Form U-5 (promulgated by a self-regulatory organization) or Form MSD-5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter; and

(D) A complete and current Form G-FIN (§ 449.1 of this chapter) and, if applicable, a Form G-FINW (§ 449.2 of this chapter).

(ii) For purposes of paragraph (a)(3)(i)(A) of this section, “safekeeping” may be shown as a location of any securities long as long as the financial institution complies with the requirements of part 450 of this chapter with respect to such securities.

(b) *Preservation of records.* (1) The records required by paragraph (a)(3)(i)(A) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragraphs (a)(3)(i)(B) and (C) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution.

(3) The records required by paragraph (a)(3)(i)(D) of this section shall be preserved for at least three years after the financial institution has notified the appropriate regulatory agency that it has ceased to function as a government securities broker or dealer.

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(c) *Effective date.* This section shall be effective on July 25, 1987, except that until October 31, 1987, a financial institution government securities broker or dealer is not required to make and keep current the securities position record required by paragraph (a)(3)(i)(A) of this section.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988; 60 FR 11026, Mar. 1, 1995; 62 FR 7155, Feb. 18, 1997; 72 FR 54411, Sept. 15, 2006]

§ 404.5 Securities counts by registered government securities brokers and dealers.

(a) *Securities counts.* Every registered government securities broker or dealer shall comply with the requirements of § 240.17a-13 of this title (Commission Rule 17a-13), with the modification that references to “broker or dealer” and “broker and dealer registered pursuant to Section 15 of the Act” include registered government securities brokers or dealers.

(b) *Effective date.* This section shall be effective on October 31, 1987.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

PART 405—REPORTS AND AUDIT

Sec.

405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

405.2 Reports to be made by registered government securities brokers and dealers.

405.3 Notification provisions for certain registered government securities brokers and dealers.

405.4 Financial recordkeeping and reporting of currency and foreign transactions by registered government securities brokers and dealers.

405.5 Risk assessment reporting requirements for registered government securities brokers and dealers.

AUTHORITY: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27954, July 24, 1987, unless otherwise noted.

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§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a-5, 240.17a-8, and 240.17a-11 of this title (Commission Rules 17a-5, 17a-8 and 17a-11), including provisions of those rules relating to OTC derivatives dealers, constitutes compliance with this part.

(b) A government securities broker or dealer that is a financial institution and is subject to financial reporting rules of its appropriate regulatory agency is exempt from the provisions of §§ 405.2 and 405.3.

(c) This part shall be effective July 25, 1987, *Provided however,*

(1) That registered government securities brokers or dealers shall first be required to file the reports required by § 240.17a-5(a), by virtue of § 405.2, for the month and the quarter during which they were first required to comply with part 402 of this chapter other than the interim liquid capital requirements of § 402.1(f); but that

(2) For any quarter ending prior to the quarter during which they were first required to comply with part 402 of this chapter other than the interim liquid capital requirements of § 402.1(f), registered government securities brokers or dealers shall file with the designated examining authority for such registered broker or dealer, within 17 business days after the close of the quarter, an unaudited balance sheet (with appropriate notes) for such quarter, prepared in accordance with generally accepted accounting principles.

[52 FR 27954, July 24, 1987, as amended at 71 FR 54411, Sept. 15, 2006]

§ 405.2 Reports to be made by registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of this chapter and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-5 of this title (SEC